

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

Nov 02, 2020

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

EMMANUEL ROY,

Plaintiff,

v.

PIONEER HUMAN RESOURCES,
INC; SPOKANE RESIDENTIAL
REENTRY CENTER; DAN
SIEGLER; CARLOS SOLOZAR;
and SUSAN JOHNSON-CONNERS,

Defendants.

NO: 2:20-CV-235-RMP

ORDER DENYING PLAINTIFF'S
MOTION TO REMAND AND
GRANTING IN PART
DEFENDANTS' MOTION TO
DISMISS

BEFORE THE COURT is Plaintiff Emmanuel Roy's Motion for Remand, ECF No. 4, and Defendants' Pioneer Human Resources, et al.'s Motion to Dismiss, ECF No. 3. Both matters were submitted for consideration without oral argument. *Id.* Having reviewed the parties' briefing, and for the reasons that follow, the Court denies Plaintiff's Motion for Remand and grants Defendants' Motion to Dismiss.

ORDER DENYING PLAINTIFF'S MOTION TO REMAND AND GRANTING IN PART DEFENDANTS' MOTION TO DISMISS ~ 1

BACKGROUND

Plaintiff is a federal inmate in the custody of the Federal Bureau of Prisons (“BOP”). ECF No. 3 at 2. Defendants are Pioneer Human Resources, Inc. (“Pioneer”), Spokane Residential Reentry Center (“SRRC”), Dan Siegler, Carlos Solozar, and Susan Johnson-Connors. ECF No. 1-3 at 1–2. Pioneer is a Washington state corporation. *Id.* SRRC is an affiliate of Pioneer. *Id.* Dan Siegler, Carlos Solozar, and Susan Johnson-Connors are all employees of SRRC.

Plaintiff alleges that on November 29, 2018, he was transferred to the SRRC, managed by Pioneer, before being released to home confinement. ECF No. 1-3 at 2. Subsequently, as a result of allegedly false violation reports by Defendants, Plaintiff claims that Defendants “remanded Plaintiff from home confinement to SRRC restriction,” “caused the arrest of Plaintiff,” subsequently incarcerated Plaintiff in Spokane at the Spokane County Jail, and ultimately revoked Plaintiff’s ability to complete the last twelve months of his sentence in community custody. *Id.* at 3.

On April 7, 2020, Plaintiff, appearing pro se, filed a Complaint against Defendants in the Spokane County Superior Court in the State of Washington. ECF No. 1-3 at 1. Plaintiff raised nine causes of action: (1) Malicious Abuse of Process; (2) Damages for False Arrest; (3) Damages for False Imprisonment; (4) Damages for Tortious Interference with Employment; (5) Damages for Breach of Fiduciary Obligations; (6) Damages for Breach of Statutory Duty; (7) Damages for Fraud; (8)

1 Damages for Retaliation; and (9) Damages for Failure to Train and Supervise –
2 respondeat superior. *Id.* at 4.

3 On June 24, 2020, Defendants filed a Notice of Removal to federal court,
4 alleging that this Court has federal question subject matter jurisdiction pursuant to
5 28 U.S.C. § 1331 over Plaintiff's claim for breach of statutory duties. ECF No. 1 at
6 3; ECF No. 8 at 6. Defendants also claim the Court has supplemental jurisdiction,
7 pursuant to 28 U.S.C. § 1367 over Plaintiff's state law claims for malicious abuse of
8 process, false arrest, false imprisonment, tortious interference with employment,
9 breach of fiduciary obligations, retaliation, and failure to train and supervise. ECF
10 No. 1 at 4. Defendants assert that the state law action arises out of the same facts
11 and circumstances as the federal law complaint. ECF No. 3 at 3.

12 On July 6, 2020, Defendants filed a Motion to Dismiss Plaintiff's Complaint
13 pursuant to Fed. R. Civ. P. 12(b)(6), for failure to state a claim upon which relief can
14 be granted. ECF No. 3. Without responding to the Motion to Dismiss, on July 15,
15 2020, Plaintiff filed a Motion for Remand to Spokane County Superior Court. ECF
16 No. 4. Plaintiff alleges that the Court lacks original subject matter jurisdiction to
17 hear the controversy. ECF No. 5 at 5. Defendants timely responded, opposing
18 Plaintiff's Motion for Remand. ECF No. 8.

LEGAL STANDARDS

Subject Matter Jurisdiction

A complaint filed in state court may be removed to the federal district court when the federal court would have original jurisdiction over the action. 28 U.S.C. § 1441(a). Courts have federal question jurisdiction when an action arises “under the Constitution, laws, or treaties of the United States.” 28 U.S.C. § 1331. Under 28 U.S.C. § 1441, the threshold requirement for removal is “a finding that the complaint contains a cause of action that is within the original jurisdiction of the district court.” *Hunter v. Philip Morris USA*, 582 F.3d 1039, 1042 (9th Cir. 2009). The removing party bears the burden of establishing federal jurisdiction when seeking removal. *Emrich v. Touche Ross & Co.*, 846 F.2d 1190, 1195 (9th Cir. 1988).

A case may be remanded to state court if the district court lacks subject matter jurisdiction. *Sonoma Falls Developers, LLC v. Nev. Gold & Casinos, Inc.*, 272 F. Supp. 2d 919, 921 (N.D. Cal. 2003). In a motion to remand to state court, the party asserting federal jurisdiction has the burden of proof; it must prove federal jurisdiction by a preponderance of the evidence. *Carrington v. City of Tacoma*, 276 F. Supp. 3d 1035, 1041 (W.D. Wash. 2017). Given the strong presumption against removal, the removing party “always has the burden of establishing that removal is proper.” *Hunter*, 582 F.3d at 1042.

Both parties cite to the well-pleaded complaint rule that dictates that federal jurisdiction exists “when a federal question is presented on the face of the plaintiff’s

properly pleaded complaint.” *Caterpillar Inc. v. Williams*, 482 U.S. 386, 391 (1987). A case arises under federal law when a plaintiff’s well-pleaded complaint establishes either “(1) that federal law creates the cause of action or (2) that the plaintiff’s asserted right to relief depends on the resolution of a substantial question of federal law.” *Peabody Coal Co. v. Navajo Nation*, 373 F.3d 945, 949 (9th Cir. 2004). Under the artful pleading doctrine, “a plaintiff may not defeat removal by omitting to plead necessary federal questions.” *Hansen v. Grp. Health Coop.*, 902 F.3d 1051, 1057 (9th Cir. 2018). In other words, a plaintiff does not bypass federal jurisdiction merely because the complaint does not explicitly refer to federal law. *Id.*

Courts have federal question jurisdiction over a state law claim if it “necessarily raises a stated federal issue” that is disputed and substantial, which “a federal forum would entertain without disturbing any congressionally approved balance of federal and state judicial responsibilities.” *Cook Inlet Region, Inc. v. Rude*, 690 F.3d 1127, 1130 (9th Cir. 2012).

Where a federal court has original jurisdiction over a federal claim, it also has supplemental jurisdiction over all state-law claims that are “so related to claims in the action within such original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution.” 28 U.S.C. § 1367(a). Courts may decline to exercise supplemental jurisdiction if the district court dismisses “all claims over which it has original jurisdiction.” 28 U.S.C. § 1367(c)(3). In determining whether to retain jurisdiction, courts should consider and

1 weigh “the values of judicial economy, convenience, fairness, and comity.” *Acri v.*
2 *Varian Assoc., Inc.*, 114 F.3d 999, 1002 (9th Cir. 1997).

3 ***Fed. R. Civ. P. 12(b)(6)***

4 A claim will be dismissed if it fails to state a claim upon which relief can be
5 granted. Fed. R. Civ. P. 12(b)(6). A complaint must state “enough facts to state a
6 claim to relief that is plausible on its face,” in order to survive a motion to dismiss
7 under Fed. R. Civ. P. 12(b)(6). *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570
8 (2007). A plaintiff must provide more than mere labels, conclusions, or a
9 restatement of a cause’s elements. *Id.* at 555. A facially plausible claim includes
10 enough factual content to allow the court to “draw the reasonable inference that the
11 defendant is liable for the misconduct alleged.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678
12 (2009).

13 In evaluating a motion to dismiss, courts must accept the complaint’s
14 allegations as true; however, courts are not bound to accept legal conclusions. *Iqbal*,
15 556 U.S. at 678. With well-pleaded factual allegations, courts should assume their
16 veracity before determining whether the plausibility gives rise to an entitlement to
17 relief. *Iqbal*, 556 U.S. 679. Courts should construe the pleadings in the light most
18 favorable to the nonmoving party. *Knieval v. ESPN*, 393 F.3d 1068, 1072 (9th Cir.
19 2005). Pro se filings in particular should be construed liberally when evaluating
20 them under this standard. *Hebbe v. Pliler*, 627 F.3d 338, 342 (9th Cir. 2010).

1 In dismissing a complaint for failure to state a claim, a district court “should
2 grant leave to amend,” regardless of whether a request to amend the pleading was
3 made, unless the court determines that the “pleading could not possibly be cured by
4 the allegations of other facts.” *Doe v. U.S.*, 58 F.3d 494, 497 (9th Cir. 1995). Courts
5 should grant leave to amend when “it appears at all possible that the plaintiff can
6 correct the defect.” *Vess v. Ciba-Geigy Corp. USA*, 317 F.3d 1097, 1108 (9th Cir.
7 2003).

8 DISCUSSION

9 Plaintiff’s Motion to Remand

10 *Federal Question*

11 Plaintiff alleges that the Court lacks subject matter jurisdiction because the
12 Complaint does not implicate a federal question. ECF No. 5 at 5. Plaintiff denies
13 claiming a remedy under a federal statute; rather, Plaintiff asserts that the Complaint
14 merely identifies duties imposed under a federal statute as predicates to the alleged
15 state law claims. *Id.* Further, Plaintiff alleges that the state law claims do not
16 depend on the resolution of federal law, and the Complaint fails to allege a claim
17 that arises under federal law. *Id.* Plaintiff suggests that the Complaint provides
18 “two alternative theories,” (1) a breach of statutory duties under federal law, “only as
19 a predicate violation of the state law claims,” and (2) common law violations. *Id.* at
20 6. Plaintiff argues that, as a result, the federal statute is not an essential element to
21 the state law claims. *Id.*

1 Defendants assert that the Court has subject matter jurisdiction because
2 Plaintiff's state law claims are "predicated on the alleged breach of statutory duties
3 under federal law." ECF No. 8 at 2. Defendants argue that federal jurisdiction
4 exists because Plaintiff identifies duties created by federal law and the nature of the
5 legal duties arise under federal law. *Id.* at 6. Defendants also point to Plaintiff's
6 retaliation claim which alleges First Amendment violations, arguing that this is an
7 "inherently federal claim." *Id.* at 10. Further, Defendants assert that Plaintiff's
8 rights under federal law are dependent on his status as a federal inmate, implicating
9 federal law. *Id.* at 8.

10 Courts have federal question jurisdiction when a claim is brought under a
11 federal statute that incorporates state law. *Cook*, 690 F.3d at 1131. In *Cook*,
12 plaintiff brought claims under Alaska state law and the Alaska Native Claims
13 Settlement Act, a federal law. *Id.* at 1129. Defendants appealed the district court's
14 summary judgment alleging that the district court lacked subject matter jurisdiction.
15 *Id.* On appeal, the Ninth Circuit found that the district court did have federal
16 question subject matter jurisdiction because federal law created both causes of
17 action, the Alaska state law claim and the Settlement Act claim. *Id.* at 1130.
18 Plaintiff brought a federal claim that incorporated state law. *Id.* at 1131. Plaintiff
19 could not successfully bring a claim directly under state law because federal law
20 governed the issue at hand. *Id.* at 1131.

1 In the Complaint, Plaintiff asserts a cause of action under the federal statutory
2 code, 28 U.S.C. § 3624. ECF No. 1-3 at 9. Plaintiff argues that the federal statute
3 does not provide remedies, but that factor does not determine federal jurisdiction.
4 ECF No. 5 at 5. As discussed in *Cook*, the Court has original jurisdiction when a
5 federal law is implicated, regardless of whether state law is also involved. *Cook*,
6 690 F.3d at 1131.

7 In evaluating whether it has federal question subject matter jurisdiction, the
8 Court looks to whether the federal law created the cause of action. *Id.* at 1130.
9 Plaintiff's claim of breach of statutory duties arises under 28 U.S.C. § 3624, the
10 source of those duties. The breach of statutory duties is created by the federal law
11 that created those duties. Therefore, Plaintiff's right to relief is dependent on federal
12 law, and Plaintiff's cause of action for breach of statutory duty implicates a federal
13 question.

14 Additionally, Plaintiff alleges that he was retaliated against as a result of
15 exercising his First Amendment rights. ECF No. 1-3 at 12. Plaintiff's retaliation
16 claim is grounded on the violation of his constitutional rights. *Id.* The statutory
17 basis for bringing a claim for violation of constitutional rights is 42 U.S.C. § 1983, a
18 federal statute. Thus, Plaintiff's cause of action for retaliation arises under federal
19 law and the Court has federal question jurisdiction over the retaliation claim.

20 Furthermore, Plaintiff relies on a theory of respondeat superior, alleging that
21 Defendants failed to properly train and supervise their employees in order to prevent

1 employees from engaging in retaliatory conduct. ECF No. 1-3 at 14. This claim is
2 based on the alleged retaliatory action that employees took against Plaintiff after
3 Plaintiff exercised his First Amendment rights. *Id.* As explained *supra*, the statute
4 for bringing a claim of violation of constitutional rights is under 42 U.S.C. § 1983.
5 Therefore, Plaintiff’s cause of action for failure to “train and supervise – respondeat
6 superior” arises under federal law, and the Court has federal question jurisdiction
7 over this claim. ECF No. 1-3 at 14.

8 For these reasons, the Court finds that it has federal question jurisdiction over
9 Plaintiff’s causes of action for breach of statutory duty, damages for retaliation, and
10 damages for failure to “train and supervise – respondeat superior.”

11 ***Supplemental Jurisdiction***

12 Plaintiff argues that it would be inappropriate for the Court to exercise
13 supplemental jurisdiction. ECF No. 9 at 4. Plaintiff cites precedent that suggests
14 courts should decline to exercise supplemental jurisdiction where the district court
15 dismissed all claims over which it had original jurisdiction. *Id.* (citing *Carnegie-*
16 *Mellon Univ. v. Cohill*, 484 U.S. 343, 350 (1988), *superseded by statute as stated in*
17 *Sanford v. MemberWorks, Inc.*, 625 F.3d 550, 561 (9th Cir. 2010), (suggesting that
18 courts should decline to exercise supplemental jurisdiction when “federal-law claims
19 have dropped out of the lawsuit in its early stages and only state-law claims
20 remain”)).

1 Defendants claim that supplemental jurisdiction is appropriate because all of
2 Plaintiff's claims arise out of the same facts and circumstances. ECF No. 8 at 4.

3 Courts may exercise supplemental jurisdiction over all related claims that
4 form part of the same controversy over which it has original jurisdiction. 28 U.S.C.
5 § 1367. In determining whether to exercise supplemental jurisdiction, courts
6 consider factors such as judicial economy, convenience, fairness, and comity. *Brady*
7 *v. Brown*, 51 F.3d 810, 816 (9th Cir. 1995). In *Brady*, the plaintiffs brought a cause
8 of action under the Racketeer Influenced and Corrupt Organizations Act ("RICO"), a
9 federal statute, and various state law claims including fraud, conversion,
10 constructive trust, and breach of fiduciary duty. *Id.* at 815. The district court
11 exercised supplemental jurisdiction, finding the defendants liable for fraud. *Id.* In
12 its decision, the court considered whether "a return to state court would have been a
13 waste of judicial resources when the case had been in federal court for some time."
14 *Id.* at 816. On appeal, the Ninth Circuit upheld the district court's decision to retain
15 jurisdiction over the state claims, reasoning that it is appropriate for district courts to
16 retain jurisdiction even when federal claims are dismissed. *Id.* A federal claim's
17 lack of merit does not mean that supplemental jurisdiction dissipates. *Id.* In other
18 words, courts may exercise supplemental jurisdiction even if the federal claim lacks
19 merit. *Id.*

20 Plaintiff asserts that supplemental jurisdiction is inappropriate because "there
21 is no underlying federal action to speak of." ECF No. 9 at 4. However, as discussed

1 *supra*, several of Plaintiff's claims are grounded in federal law. The federal claims
2 and state claims derive from the same facts and controversy. Therefore, the Court
3 has supplemental jurisdiction pursuant to 28 U.S.C. § 1367. In its discretion, the
4 Court finds that exercising supplemental jurisdiction over Plaintiff's state claims
5 promotes judicial economy, convenience, and fairness. *Acri*, 114 F.3d at 1002. Like
6 *Brady*, this matter has been in federal court for some time and a return to state court
7 would be a waste of judicial resources. *Brady*, 51 F.3d at 816.

8 For these reasons, the Court is asserting jurisdiction over Plaintiff's state law
9 claims, including damages for false arrest, damages for false imprisonment, damages
10 for tortious interference with employment, damages for breach of fiduciary
11 obligations, and damages for fraud.

12 **Motion to Dismiss**

13 Defendants filed a Motion to Dismiss pursuant to Fed. R. Civ. P. 12(b)(6).
14 Throughout their briefing, Defendants rely upon the concurrently filed decisions in
15 *Vega v. U.S.*, 881 F.3d 1146 (published memorandum), 724 Fed. Appx. 536
16 (unpublished) (9th Cir. 2018).

17 In *Vega*, the plaintiff was transferred from a federal prison to a residential
18 reentry center operated by Pioneer. *Vega*, 881 F.3d at 1148. The court classified
19 Pioneer as a BOP contractor, stating that "prisoners assigned to this type of reentry
20 program technically remain in the custody of the BOP." *Id.* at 1149. After several
21 incidents, the plaintiff was transferred back to federal prison. *Id.* at 1150.

1 Subsequently, the plaintiff filed a complaint alleging constitutional violations and
2 several tort claims under a federal statute and Washington law. *Id.* The plaintiff
3 maintained that a false violation report was filed against him after staff learned that
4 the plaintiff was pursuing litigation against the Department of Labor and
5 Industries. *Id.* The plaintiff further alleged that employees conspired to remove
6 plaintiff from the reentry program because he asserted his First Amendment rights.
7 *Id.* at 1148.

8 The district court, in *Vega*, granted the defendants' motion to dismiss the
9 plaintiff's tort claims for false imprisonment, false arrest, malicious prosecution,
10 abuse of process, outrage/intentional infliction of emotional distress, and invasion
11 of privacy. 881 F.3d at 1151. Additionally, the district court granted the
12 defendants' motion for summary judgement, dismissing the plaintiff's negligence
13 claim. *Id.* The Ninth Circuit upheld the dismissal of these claims, concluding that
14 the plaintiff failed to satisfy the requirements of Washington law and federal
15 pleading standards. *Id.* at 1155; *Vega*, 724 Fed. Appx. at 539–41.

16 ***Malicious Abuse of Process***

17 Plaintiff brings a cause of action for malicious abuse of process, alleging that
18 Defendants “abused and maliciously used the process as a weapon” when they
19 engaged the disciplinary process without legal justification. ECF No. 1-3 at 4.
20 Plaintiff maintains that Defendants filed two violation reports against Plaintiff,
21

1 initiating a baseless investigation by the Community Disciplinary Committee¹
2 (“CDC”). *Id.* at 5. Subsequently, Defendants filed a report with the BOP, alleging
3 that the CDC conducted a hearing. *Id.*

4 In response, Defendants argue for dismissal on the grounds that the Complaint
5 contains “no allegation that criminal proceedings were initiated against Plaintiff” by
6 Pioneer. ECF No. 3 at 10. Defendants allege that BOP administrative proceedings
7 prior to prison transfers are not considered a prosecution or legal proceeding. ECF
8 *Id.* at 10-11. Additionally, Defendants raise the argument that BOP, not Pioneer,
9 made all decisions regarding Plaintiff’s custody and confinement. *Id.*

10 Malicious abuse of process requires a proof of malice and willfulness.
11 *McCollough v. Johnson, Rodenburg & Lauinger, LLC*, 637 F.3d 939, 953 (9th Cir.
12 2011). To prevail in a malicious abuse of process claim, a plaintiff must show: “(1)
13 the existence of an ulterior purpose to accomplish an object not within the proper
14 scope of the process, and (2) an act in the use of legal process not proper in the
15 regular prosecution of the proceedings.” *Spencer v. City of Spokane*, No. 2:19-CV-
16 100-RMP, 2019 WL 6118265, at *11 (E.D. Wash. Nov. 18, 2019) (holding that
17 defendants executed authorized processes within the scope of criminal prosecution
18 when defendants initiated a criminal proceeding against the defendant). Initiating a
19

20 ¹ Plaintiff does not explain the term “Community Disciplinary Committee,” but the
21 Court infers that he is referring to a governing group within the SRRC.

1 prosecution does not constitute an abuse of process, regardless of a malicious
2 motive. *Id.* A defendant is not liable when he merely carries out the process to its
3 authorized conclusions. *Id.*

4 To survive dismissal, Plaintiff must allege facts supporting that Defendants
5 used a legal process that was improper in the regular conduct of the proceedings. *Id.*
6 Plaintiff alleges that Defendants filed violation reports and conducted a CDC
7 hearing but failed to allege how those legal processes were improper. ECF No. 1-3
8 at 5. The mere initiation of a prosecution does not establish an abuse of process
9 claim. *Spencer*, 2019 WL 6118265, at *11. The Complaint makes conclusory
10 statements that Defendants abused the process, which is not enough to survive a
11 Rule 12(b)(6) motion. Fed. R. Civ. P. 12(b)(6); *Twombly*, 550 U.S. at 555.

12 For these reasons, the Court dismisses Plaintiff's malicious abuse of process
13 claim without prejudice and with leave to amend.

14 ***False Arrest***

15 In the Complaint, Plaintiff raises a claim for false arrest, alleging that
16 Defendants took retaliatory action by causing Plaintiff's arrest "based on specious
17 and unfounded allegations that Defendant[s] knew to be false." ECF No. 1-3 at 5.
18 In their Motion to Dismiss, Defendants argue that false arrest and false
19 imprisonment are "essentially the same." ECF No. 3 at 9. In both claims, Plaintiff's
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21

1 status as a prisoner results in a lack of choice to remain at a specific detention
2 facility. *Id.*

3 To maintain an action of false arrest, the plaintiff must plead facts that would
4 show the defendant ordered or otherwise procured the arrests, and the arrests were
5 without probable cause. *Lacey v. Maricopa Cty.*, 693 F.3d 896, 918 (9th Cir. 2012).
6 In Washington, false arrest occurs when “a person with actual or pretended legal
7 authority to arrest unlawfully restrains or imprisons another person.” *Youker v.*
8 *Douglas Cty.*, 162 Wn. App. 448, 465 (Wash. Ct. App. 2011); *Spencer*, 2019 WL
9 6118265, at *10. Generally, an officer is not liable if the arrest is made “under a
10 warrant or process which is valid on its face.” *Bender v. Seattle*, 99 Wn.2d. 582, 591
11 (Wash. 1983).

12 The Complaint must allege facts that Defendants unlawfully restrained or
13 imprisoned Plaintiff in order to survive the Motion to Dismiss. Fed. R. Civ. P.
14 12(b)(6); *Youker*, 162 Wn. App. at 465. Plaintiff claims that he was unlawfully
15 restrained as a result of unfounded allegations. ECF No. 1-3 at 6. However,
16 Plaintiff fails to plead facts as to how the allegations were unfounded and how
17 Defendants’ actions were unlawful. *Id.* Rather, Plaintiff alleges conclusory
18 statements which is not enough to survive a Rule 12(b)(6) motion. Fed. R. Civ. P.
19 12(b)(6); *Twombly*, 550 U.S. at 555.

20 For these reasons, the Court dismisses Plaintiff’s false arrest claim without
21 prejudice and with leave to amend.

False Imprisonment

Plaintiff claims that Defendants falsely imprisoned Plaintiff when they placed him on “RRC building restriction.” ECF No. 1-3 at 7. Subsequently, Plaintiff alleges that he was falsely imprisoned for an additional fifteen months. *Id.* In response, Defendants cite to *Vega* and argue for dismissal on the basis that inmates do not have a liberty interest in their placement at a particular institution. ECF No. 3 at 9; *Vega*, 724 Fed. Appx. at 540.

False imprisonment occurs when “a person is restrained or imprisoned when he is deprived of either liberty of movement or freedom to remain in the place of his lawful choice.” *Vega*, 724 Fed. Appx. at 540.

It is well-settled that inmates do not have liberty interests unless state law creates one. *Brown v. Mahoney*, 71 Fed. Appx. 722, 726 (9th Cir. 2003). Pursuant to Washington law, courts have denied the creation of a liberty interest in remaining at a specific institution. *Vega*, 724 Fed. Appx. at 540 (denying an inmate’s claim that he had a liberty interest at a specific institution); *Vignolo v. Miller*, 120 F.3d 1075, 1078 (9th Cir. 1997) (ruling that generally prisoners do not have a “constitutionally-protected liberty interest in being held at, or remaining at, a given facility); *In re Marler*, 108 Wn. App. 799, 807 (Wash. Ct. App. 2001) (holding that inmates lack a liberty interest in being released before serving the full maximum sentence); *In re McCarthy*, 161 Wn.2d 234, 240 (Wash. 2007) (acknowledging that

1 generally inmates have no liberty interest in “release prior to the expiration of a valid
2 sentence”).

3 To survive dismissal, the Complaint must allege facts that Plaintiff retained a
4 liberty interest in remaining at the reentry center. *Vega*, 724 Fed. Appx. at 540.
5 However, the law does not recognize an inmate’s liberty interest in his placement at
6 a specific facility. *Id.*; *Vignolo*, 120 F.3d at 1078. Therefore, Plaintiff is unable to
7 allege any facts to establish a liberty interest in remaining at the reentry center.
8 Additionally, case law states that inmates retain no liberty interest in an early
9 release. *In re Marler*, 108 Wn. App. at 807. Thus, Plaintiff lacked a liberty interest
10 in his 12-month early release. There is no basis for concluding that Plaintiff could
11 amend his allegations to state a claim that is not supported by law in this type of
12 situation because such a right does not exist.

13 For these reasons, the Court dismisses Plaintiff’s false imprisonment claim
14 with prejudice and without leave to amend.

15 ***Tortious Interference with Employment***

16 Plaintiff alleges that Defendants engaged in tortious interference in Plaintiff’s
17 employment when Defendants removed Plaintiff from Revive Counseling, LLC
18 (“Revive Counseling”). ECF No. 1-3 at 7. In their Motion to Dismiss, Defendants
19 argue that Plaintiff lacked a right to employment while in federal custody. ECF No.
20 3 at 12–13.

1 Under Washington law, a tortious interference claim requires five elements:
2 (1) the existence of a valid contractual relationship or business expectancy; (2) that
3 the defendants had knowledge of the same; (3) defendants' intentional interference
4 induced or caused a breach or termination of that relationship or expectancy; (4) the
5 defendants interfered with an improper purpose or used improper means; and (5)
6 resultant damage. *Leingang v. Pierce Cty. Med. Bureau, Inc.*, 131 Wn.2d 133, 157
7 (Wash. 1997). An employment relationship constitutes a contractual relationship
8 and, therefore, falls within the scope of this claim. *See Kiebertz & Assoc., Inc. v.*
9 *Rehn*, 68 Wn. App. 260, 265 (Wash. Ct. App. 1992).

10 In the Complaint, Plaintiff alleges that Defendants confiscated Plaintiff's cell
11 phone which he used to communicate and conduct his duties at Revive Counseling.
12 ECF No. 1-3 at 3. Further, Plaintiff claims that Defendants "remove[d] Plaintiff
13 from Revive Counseling, his place of employment." *Id.* at 7. However, Plaintiff
14 fails to plead that a contractual relationship existed with Revive Counseling.
15 Additionally, the Complaint lacks specific facts suggesting Defendants interfered
16 with an improper purpose.

17 For these reasons, the Court dismisses Plaintiff's tortious interference with
18 employment without prejudice and with leave to amend.

19 ***Breach of Fiduciary Obligations***

20 Plaintiff claims that Defendants had an obligation to "advise Plaintiff that his
21 employment with Revive Counseling was strictly policy development." ECF No. 1-

1 3 at 8. Plaintiff alleges that Defendants breached their fiduciary obligations when
2 Defendants failed to advise Plaintiff about the scope of his employment. *Id.* Further,
3 Defendants allegedly interfered with Plaintiff's employment when Defendants
4 restricted Plaintiff to SRRC building and caused his false arrest and imprisonment.
5 *Id.* In response, Defendants argue for dismissal on the grounds that Plaintiff failed
6 to allege facts that establish a fiduciary relationship. ECF No. 3 at 15.

7 Pursuant to Washington law regarding a claim for breach of fiduciary duties, a
8 plaintiff must prove that: (1) a fiduciary relationship existed, giving rise to a duty of
9 care from the defendant to the plaintiff; (2) the fiduciary's act or omission breached
10 the standard of care; (3) the plaintiff suffered damages; and (4) the damages were the
11 proximate cause of the fiduciary's breach of the standard of care. *Wells Fargo Ins.*
12 *Serv. USA, Inc. v. Tyndell*, No. 2:16-CV-89-SMJ, 2016 WL 7191692, at *3 (E.D.
13 Wash. Dec. 12, 2016).

14 Generally, a fiduciary relationship arises as a matter of law in certain contexts.
15 *Micro Enhancement Int'l, Inc. v. Coopers & Lybrand, LLP*, 110 Wn. App. 412, 434
16 (Wash. Ct. App. 2002). However, a fiduciary relationship may arise in fact,
17 regardless of the parties' relationship in law. *Id.* A fiduciary relationship exists in
18 relationships of confidence and trust, justifying one party's expectation that "his
19 interests will be protected by the other party." *In re River Park Square Project Bond*
20 *Litig.*, No. CS-01-0127-EFS, 2004 WL 7340034, at * 1 (E.D. Wash. Apr. 2, 2004).

1 In the Complaint, Plaintiff claims that Defendants “serve in a fiduciary
2 capacity” as a result of Defendants’ “position and control over Plaintiff,” thus,
3 owing Plaintiff a duty of reasonable care. ECF No. 1-3 at 8. To survive a Rule
4 12(b)(6) motion to dismiss, Plaintiff must plead facts establishing that a fiduciary
5 relationship existed between Plaintiff and Defendants. Fed. R. Civ. P. 12(b)(6).
6 Rather than pleading specific facts, Plaintiff merely stated that a fiduciary
7 relationship existed as a result of Defendants’ “control over Plaintiff.” ECF No. 1-3
8 at 8. This is a conclusory statement that is insufficient to plausibly allege how
9 Defendants retained control over Plaintiff. *Twombly*, 550 U.S. at 555. Further, the
10 Complaint fails to allege any facts to plausibly support that Plaintiff expected that
11 his interests were to be protected by Defendants.

12 For this reason, the Court dismisses Plaintiff’s breach of fiduciary obligations
13 claim without prejudice and with leave to amend.

14 ***Breach of Federal Statutory Duties***

15 Plaintiff claims that Defendants breached their statutory duty imposed by 18
16 U.S.C. § 3624(c)(5) by engaging in retaliatory acts that resulted in harm to Plaintiff.
17 ECF No. 1-3 at 9. Defendants argue for dismissal, asserting the statutory section
18 that Plaintiff cites to is inapplicable. ECF No. 3 at 17.

19 Pursuant to 28 U.S.C. § 3624(c)(5), the Director of the Bureau of Prisons must
20 report specific statistics describing the “Bureau’s utilization of community
21 corrections facilities.” The statutory provision does not impose any duty on a

1 defendant to an individual federal prisoner. Therefore, this statutory code is
2 inapplicable to Plaintiff's Complaint.

3 For this reason, the Court dismisses Plaintiff's breach of statutory duties claim
4 with prejudice and without leave to amend.

5 ***Fraud***

6 Plaintiff alleges that Defendants failed to "require or request the Plaintiff to
7 obtain a written employment contract between Plaintiff and Revive." ECF No. 1-3
8 at 10. Further, Plaintiff alleges that Defendants misled Plaintiff into believing the
9 statute of frauds did not apply to Defendants' approval of Plaintiff's employment.
10 *Id.* Plaintiff asserts that this misrepresentation was fraudulent. *Id.*

11 Defendants argue for dismissal on the grounds that Plaintiff failed to allege
12 the required elements for a fraud claim. ECF No. 3 at 16. Additionally, Defendants
13 assert that the statute of frauds is inapplicable in this situation. *Id.*

14 The circumstances of fraud must be stated with particularity and federal courts
15 will examine state law to determine whether the elements of fraud have been "pled
16 sufficiently to state a cause of action." *Vess*, 317 F.3d at 1103. Pursuant to
17 Washington law, a plaintiff must prove nine elements to prevail on a fraud claim.
18 *Adams v. King Cty.*, 164 Wn.2d. 640, 662 (Wash. 2008). These nine elements are:
19 "(1) representation of an existing fact; (2) materiality; (3) falsity; (4) the speaker's
20 knowledge of its falsity; (5) intent of the speaker that it should be acted upon by the
21 plaintiff; (6) plaintiff's ignorance of its falsity; (7) plaintiff's reliance on the truth of

1 the representation; (8) plaintiff's right to rely upon it; and (9) damages suffered by
2 the plaintiff." *Id.*

3 The statute of frauds governs the memorialization of agreements; specifically,
4 which contracts must be in writing in order to be valid. Revised Code of
5 Washington ("RCW") § 19.36.010. The statute of frauds applies in contexts where
6 an agreement cannot be satisfied within one year. *Id.* The statute of frauds fails to
7 apply in this context because the Plaintiff's employment at Revive Counseling was
8 for an unknown duration.

9 To survive a motion to dismiss, Plaintiff must allege facts that satisfy the nine
10 elements of a fraud claim. Fed. R. Civ. P. 12(b)(6); *Adams*, 164 Wn.2d. at 662.
11 Plaintiff asserts that Defendants were fraudulent in their misrepresentation of the
12 applicability of the statute of frauds. ECF No. 1-3 at 10. However, this is a
13 conclusory statement and does not satisfy the burden of plausibly alleging sufficient
14 facts to support the nine elements of a fraud claim. *Twombly*, 550 U.S. at 555.

15 For these reasons, the Court dismisses Plaintiff's fraud claim with prejudice
16 and without leave to amend as there appear to be no legal basis for this claim.

17 ***Retaliation/ Negligence***

18 Plaintiff alleges that Defendants engaged in retaliatory action against Plaintiff
19 as a result of Plaintiff's demand letter. ECF No. 1-3 at 12. Defendants allegedly
20
21

1 filed false complaints against Plaintiff, confiscated his phone, and removed Plaintiff
2 from his job. ECF No. 1-3 at 12.

3 In their Motion to Dismiss, Defendants argue for dismissal because a
4 retaliation claim is “not clear from Plaintiff’s pleadings.” ECF No. 3 at 11.
5 Defendants argue that, rather, Plaintiff appears to be asserting a negligence claim,
6 which should also be dismissed on the grounds that Defendants owed no special duty
7 to Plaintiff. *Id.*

8 Plaintiff fails to assert under what law he is claiming retaliation. Because
9 Plaintiff is proceeding pro se, the Court analyzes Plaintiff’s claims under various
10 laws in which Plaintiff may be attempting to claim retaliation.

11 In a First Amendment context, the Ninth Circuit has clearly established a
12 prohibition against retaliatory punishment. *Pratt v. Rowland*, 65 F.3d 802, 806 (9th
13 Cir. 1995). Defendants cannot transfer a prisoner from one correction facility to
14 another as punishment for the prisoner exercising his constitutional right to pursue
15 civil rights litigation. *Schroeder v. McDonald*, 55 F.3d 454, 461 (9th Cir. 1995).
16 Under a First Amendment claim to retaliation in a prison context, a plaintiff must
17 prove: “(1) An assertion that a state actor took some adverse action against an
18 inmate (2) because of (3) that prisoner’s protected conduct, and that such action (4)
19 chilled the inmate’s exercise of his First Amendment rights, and (5) the action did
20 not reasonably advance a legitimate correctional goal.” *Brodheim v. Cry*, 584 F.3d
21 1262, 1269 (9th Cir. 2009).

1 If Plaintiff is pursuing a retaliation claim under the First Amendment, he must
2 plead facts that Defendants are state actors who acted against Plaintiff because of
3 Plaintiff's protected conduct and that action chilled Plaintiff's exercise of his First
4 Amendment rights. *See Brodheim*, 584 F.3d at 1269. As discussed in *Vega*, the
5 Ninth Circuit has found that Pioneer Human Services is not a state actor. *Vega*, 881
6 F.3d. at 1149. Rather, the Ninth Circuit confirmed that Pioneer is a "non-profit BOP
7 contractor, and prisoners assigned to this type of reentry program technically remain
8 in the custody of the BOP." *Id.* Thus, Plaintiff has failed to state a retaliation claim
9 under the First Amendment, because there is no allegation that a state actor was
10 responsible for the retaliation.

11 If Plaintiff is pursuing a claim for retaliation under Title VII, the *McDonnell*
12 *Douglas* burden-shifting framework applies. *Surrell v. Cal. Water Serv. Co.*, 518
13 F.3d 1097, 1105 (9th Cir. 2008); *McDonnell Douglas Corp. v. Green*, 411 U.S. 792,
14 793 (1973). To establish a prima facie case of Title VII retaliation, the plaintiff must
15 show: (1) he was engaged in a protected activity; (2) he suffered an adverse
16 employment action; and (3) there was a causal connection between the two. *Surrell*,
17 518 F.3d at 1105.

18 If Plaintiff is pursuing a claim of retaliation under Title VII, he would need to
19 plead sufficient facts to make a prima facie case. *See Surrell*, 518 F.3d at 1105.
20 Plaintiff claims that he engaged in protected activity when he exercised his First
21 Amendment rights. ECF No. 1-3 at 12. As a result of this conduct, Plaintiff alleges

1 that his employment at Revive Counseling ended. *Id.* at 3. However, Plaintiff does
2 not allege facts to establish a causal connection between these two events. For this
3 reason, Plaintiff has failed to allege a plausible claim for retaliation under Title VII.

4 A retaliation claim, pursuant to Washington state law, mirrors that of a
5 retaliation claim under Title VII. *See Estevez v. Faculty Club of Univ. of Wash.*, 129
6 Wn. App. 774, 797 (Wash. Ct. App. 2005). Under Washington law, a plaintiff must
7 establish a prima facie case by showing that: (1) he engaged in statutorily protected
8 activity; (2) an adverse employment action was taken; and (3) there was a causal link
9 between the employee's activity and the employer's adverse action. *Id.*

10 If Plaintiff is pursuing a retaliation claim under Washington state law, he
11 would need to plead facts that establish a prima facie case. *Id.* Plaintiff alleges that
12 he invoked his First Amendment rights which is protected activity. ECF No. 1-3 at
13 12. Further, Plaintiff alleges that Defendants interrupted his employment at Revive
14 Counseling. *Id.* at 3. However, Plaintiff fails to allege a causal link between
15 Plaintiff's protected activity and Defendants' conduct. For this reason, Plaintiff has
16 failed to state a retaliation claim under Washington state law.

17 For these reasons, the Court dismisses Plaintiff's retaliation claim without
18 prejudice and with leave to amend.

19 Plaintiff appears to be alleging a claim of negligence against Defendants by
20 claiming that "Defendants had a legal duty to perform [their] responsibilities with
21 reasonable due care." ECF No. 1-3 at 13. Plaintiff claims that Defendants allegedly

1 breached their duty when they took the allegedly retaliatory action against Plaintiff.
2 *Id.* To prevail on a negligence claim, a plaintiff must show a duty, a breach of that
3 duty, causation, and harm. *Volk v. DeMeerleer*, 187 Wn.2d 241, 255 (Wash. 2016) .

4 To succeed on a negligence claim, Plaintiff must plead facts as to the duty
5 owed, how Defendants breached that duty, causation, and harm. *See Volk*, 187
6 Wn.2d at 255. In the Complaint, Plaintiff claims that Defendants owed a duty “to
7 perform [their] responsibilities with reasonable due care.” ECF No. 1-3 at 13.
8 Further, Plaintiff alleges that Defendants breached this duty when they filed false
9 violation reports against Plaintiff. *Id.* However, these are conclusory statements.
10 *Twombly*, 550 U.S. at 555. Plaintiff must plead specific facts to plausibly allege a
11 duty owed by Defendants, how Defendants breached that duty, and how their alleged
12 breach caused him damage. Plaintiff has failed to plausibly allege a negligence
13 claim.

14 For this reason, the Court dismisses Plaintiff’s negligence claim without
15 prejudice and with leave to amend.

16 ***Failure to Train and Supervise – Respondeat Superior***

17 Plaintiff alleges that Defendants failed to properly train and supervise their
18 employees in a manner which prevents the employees from engaging in “retaliation
19 against residents like Plaintiff.” ECF No. 1-3 at 14. Defendants allegedly knew of
20 its employees’ “unlawful conduct” as a result of prior litigation and the two letters
21 sent by Plaintiff, explaining the unlawful conduct. ECF No. 1-3 at 14.

1 In their Motion to Dismiss, Defendants argue that Pioneer cannot be
2 vicariously liable under respondeat superior because there is no underlying liability
3 for negligence. ECF No. 3 at 14. Additionally, Defendants cite to case law in which
4 courts dismissed negligent training and supervision claims when there is a vicarious
5 liability claim dependent on an employee acting within the scope of employment.
6 *See LaPlant v. Snohomish Cty.*, 162 Wn. App. 476, 479 (Wash. Ct. App. 2011)
7 (holding that under Washington law, “a cause of action for negligent supervision
8 requires a plaintiff to show that an employee acted outside the scope” of
9 employment); *see also Velasquez v. King Cty.*, No. C19-745-RSM, 2020 WL
10 3451966, at *3 (W.D. Wash. June 24, 2020) (confirming dismissal of the negligent
11 supervision because the employee’s actions occurred within the scope of
12 employment); *see also Preston v. Boyer*, No. C16-1106-JCC-MAT, 2019 WL
13 982041, at *3 (W.D. Wash. Feb. 7, 2019) (holding that claims of negligent training
14 and supervision are only proper when the employee acted outside the scope of
15 employment).

16 Pursuant to 42 U.S.C. § 1983, a plaintiff has a cause of action for the
17 “deprivation of any rights, privileges, or immunities secured by the Constitution.”
18 *Long v. Cty. of Los Angeles*, 442 F.3d 1178, 1185 (9th Cir. 2006). To state a claim
19 under 42 U.S.C. § 1983, a plaintiff must allege that: (1) a right secured by the
20 Constitution or laws of the U.S. was violated; and (2) the alleged violation was
21 committed by a person acting under the color of state law. *Id.* A person acts under

1 the color of state law when he “abuses the position given to him by the State.”

2 *McDade v. West*, 223 F.3d 1135, 1140 (9th Cir. 2000).

3 Four elements must be satisfied to establish a claim for negligent training and
4 supervision: (1) the plaintiff possessed a constitutional right of which he was
5 deprived; (2) the municipality had a policy; (3) the policy amounts to “deliberate
6 indifference” to the plaintiff’s constitutional right; and (4) the policy is the moving
7 force behind the constitutional violation. *Van Ort v. Estate of Stanewich*, 92 F.3d
8 831, 835 (9th Cir. 1996).

9 To survive a motion to dismiss, the Complaint must allege facts that satisfy
10 the elements of a negligent training and supervision claim pursuant to 42 U.S.C. §
11 1983. *Id.* Plaintiff alleges that Defendants’ employees retaliated against him as a
12 result of Plaintiff exercising his First Amendment rights. ECF No. 1-3 at 14.
13 Plaintiff claims that Defendants are liable as a result of this retaliatory conduct. *Id.*
14 Plaintiff satisfies the first requirement of a claim under 42 U.S.C. § 1983; however,
15 Plaintiff fails to allege that Defendants acted under color of the law. As previously
16 held in *Vega*, the Ninth Circuit has found that Pioneer is a contractor of BOP, not a
17 state actor. *Vega*, 881 F.3d. at 1149. Additionally, Plaintiff does not allege facts
18 that satisfy the other four elements of a negligent training and supervision claim
19 pursuant to 42 U.S.C. § 1983.

20 For these reasons, the Court dismisses Plaintiff’s negligent training and
21 supervision claim, without prejudice and with leave to amend.

1 The doctrine of respondeat superior applies when an employee is a “servant”
2 of the employer. *Krueger v. Mammoth Mountain Ski Area, Inc.*, 873 F.2d 222, 223
3 (9th Cir. 1989). A servant is defined as “a person employed to perform services for
4 another and who is subject to the other's control while performing those services.”
5 *Id.* This is most often seen in a traditional employment relationship. *Id.* Under the
6 doctrine of respondeat superior and Washington law, an employer is liable for its
7 employee’s torts committed in the scope of employment. *Evans v. Tacoma Sch.*
8 *Dist. No. 10*, 195 Wn. App. 25, 37 (Wash. Ct. App. 2016).

9 Plaintiff must assert an underlying tort in order to succeed on a claim of
10 respondeat superior. *See id.* Plaintiff alleges negligence in his Complaint, however,
11 the facts to support this claim are insufficient as discussed previously. ECF No. 1-3
12 at 13. Therefore, Plaintiff’s claim of “respondeat superior” fails because Plaintiff is
13 unable to establish an underlying tort committed by Defendants’ employees.

14 For this reason, the Court dismisses Plaintiff’s respondeat superior claim,
15 without prejudice and with leave to amend.

16 Accordingly, **IT IS HEREBY SO ORDERED** that:

17 1. Plaintiff’s Motion to Remand, **ECF No. 5**, is **DENIED**.

18 2. Defendants’ Motion to Dismiss, **ECF No. 3**, is **GRANTED IN PART**

19 with respect to dismissal of all of Plaintiff’s claims and dismissal **with**

20 **prejudice and without leave to amend** of Plaintiff’s false imprisonment,

21 breach of statutory duties, and fraud claims. The Court **DENIES IN**

